

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2351 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BALUBHAI NARSINGBHAI MARATHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr. Satish R. Patel for the petitioner and learned AGP Mr. D.P.Joshi, for the respondents.

#. The detention order dated 18th January, 1999 passed by respondent no.1 - Commissioner of Police, Ahmedabad City, in exercise of power conferred under section 3 (1) of Gujarat Prevention of Anti-Social Activities Act, 1985

("PASA" for short) is challenged in the present proceeding under article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure:C inter alia indicate that a prohibition case vide CR No. 59/99 has been registered against the petitioner at Nashabandhi Police Station (East Division) wherein country made liquor is seized from the possession of the petitioner and the matter is pending for investigation. Furthermore, two witnesses on assurance of their anonymity have supplied information about the petitioner in respect to incidents dated 23.12.98 and 1.1.99 pertaining to bootlegging activity of the petitioner. That in consideration of the above-stated material, respondent no.1 as detaining authority has come to conclusion that the petitioner is a "bootlegger" within the meaning of section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which prejudicially affects the maintenance of public order, it is necessary to pass the detention order and hence the impugned detention order is passed.

#. The petitioner has challenged the detention order on numerous grounds. It has been contended at bar on behalf of the petitioner that though the petitioner was in judicial custody at the time of passing of the impugned order, the detaining authority without considering the aspect of less drastic remedy like cancellation of bail, has passed the impugned order whereby the subjective satisfaction is vitiated and the impugned order is rendered invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, on scrutiny of papers, it appears that in the grounds of detention in penultimate para, the detaining authority has observed that the petitioner is in judicial custody and that he would apply for bail before the court and after having released on

bail, is likely to continue his bootlegging activity and as such, the detention order is necessary. The said observation suggests that the detaining authority has reached the subjective satisfaction on apprehension that the petitioner would be released by the competent court. At the same time, the grounds of detention do not disclose that the detaining authority has considered availability of less drastic remedy like opposing or cancellation of bail under section 437(5) of Cr.P.C. That thereby the subjective satisfaction reached by the detaining authority having been vitiated, the impugned order is rendered invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 18.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Balubhai Narsingbhai Marathi is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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